UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,904	09/28/2001	J. G. Walacavage	200-0665	4251

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Daniel H. Bliss
Bliss McGlynn P.C.
2075 West Big Beaver Road Suite 600
Troy, MI 48084

EXAMINER
PROCTOR, JASON SCOTT

ART UNIT	PAPER NUMBER
2123	

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	09/965,904	WALACAVAGE ET AL.
	Examiner	Art Unit	
	Jason Proctor	2123	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-15*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attached.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Primary Examiner
Art Unit 2125 2123

U.S. Patent and Trademark Office

PTOL-303 (Rev. 7-05)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20060418

REQUEST FOR RECONSIDERATION

Applicants' request for reconsideration does not place the application in condition for allowance for the following reasons.

Applicants argue that:

[Neither Taj et al. nor LeBaron et al.] disclose using the flowchart to test PLC code.

The Examiner traverses this argument as follows.

To teach the elements of the claimed invention, the elements must be arranged as required by the claim but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. Similar rationale supports finding of anticipation where the prior art teaches what is functionally equivalent to the claimed invention.

In the present situation, Taj et al. clearly discloses testing the modeled interaction for correctness (page 977, from page 976, "Simulation Run", as cited). Whether Taj et al. literally tests a "flowchart" or its equivalent representation is irrelevant; at the bare minimum Taj et al. teaches what is at least functionally equivalent. What latent feature or capability exists in the claimed method of *literally* "testing a flowchart" that is not present from Taj et al.?

Applicants have not cited support from the specification to support what is meant by *literally* "testing a flowchart". To the best of the Examiner's knowledge, there are no computer systems in existence that *literally* operate on, for example, a "flowchart". Whenever a computer

system is involved, that computer system will operate on <u>some equivalent form</u> of the desired

data, be it a spreadsheet, a graphical image, or a flowchart. Therefore, unless Applicants believe

the specification supports a specific interpretation of "testing a flowchart" which does not

somehow involve <u>some equivalent form</u> of that flowchart at some level, it appears to the

Examiner that it would be improper to interpret the claim language as *literally* "testing a

flowchart".

Applicants proceed to argue against the combination of references in a piece-meal

fashion which is unpersuasive. The references have been applied as a combination under 35

U.S.C. § 103.

Applicants further argue that:

> Contrary to the Examiner's opinion, an emulator is <u>not</u> the same as a PLC logical verification system. In
> this instance, the Examiner has adduced no factual basis to support his position that it would have been
> obvious to one of ordinary skill in the art to modify Taj et al. by way of LeBaron to combine the concept of
> teaching of emulating the PLC control software as taught by LeBaron with the modeling of operator
> interaction taught by Taj to arrive at a simulation and verification system wherein the operator and the PLC
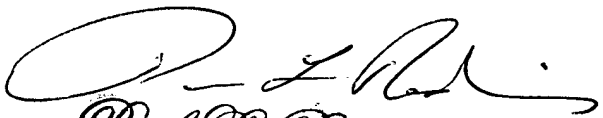> control software is modeled.

The Examiner respectfully traverses this argument as follows.

The Examiner respectfully reiterates that the identity of terminology is not required.

Applicants have not explained what "a PLC logical verification system" is except to argue that it

is "not the same [as an emulator]." In the complete absence of any further explanation, it

appears that the Examiner is left to presume that "a PLC logical verification system" is not the

same as an emulator <u>as used by</u> LeBaron, or <u>as used by</u> LeBaron in combination with Taj. This

argument is unpersuasive. The combination formed in the rejection clearly teaches "a PLC

logical verification system" as applied in the rejection.

   The Examiner has cited specific motivation to form the combination in LeBaron and Taj.

Applicants' arguments have been fully considered but have been found unpersuasive.

Paul P. Rodriguez
Primary Examiner
Art Unit 2125 2123